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Attorneys for Defendants CITY OF FAIRFIELD,  
POLICE OFFICERS MARK SCHRAER, CHAD TIGERT,  
STEVEN TROJANOWSKI, JR., STEPHEN RUIZ, TROY OVIATT,  
FRANCO CESAR and CADE BECKWITH

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARQUES PHILLIPS and CYNTHIA M.  
PHILLIPS,

Plaintiffs,

v.

CITY OF FAIRFIELD, CHIEF OF POLICE  
WILLIAM GRESHAM, OFFICER MARK  
SCHRAER, OFFICER CHAD TIGERT,  
OFFICER STEVE TROJANOWSKI, JR.,  
OFFICER MIKE BEATTY, OFFICER  
MATTHEW THOMAS, OFFICER STEPHEN  
RUIZ, OFFICER TROY OVIATT, OFFICER  
JEREMY NIPPER, OFFICER FRANCO  
CESAR, OFFICER CADE BECKWITH, and  
DOES 1 through 13,

Defendants.

Case No: CIV-S-04-0377 FCD PAN (JFM)

**DEFENDANTS' MOTION IN LIMINE  
REGARDING ADMISSIBILITY OF  
MEDIA EVIDENCE AND UNRELATED  
CIVIL MATTERS**

**MOTION IN LIMINE NO. 6**

JUDGE: Frank C. Damrell, Jr.  
TRIAL: October 31, 2006

1 **I. INTRODUCTION**

2 Defendants CITY OF FAIRFIELD, POLICE OFFICERS MARK SCHRAER, CHAD  
3 TIGERT, STEVEN TROJANOWSKI, JR., STEPHEN RUIZ, TROY OVIATT, FRANCO CESAR  
4 and CADE BECKWITH (“Defendants”) hereby move this Court *in limine* for an Order precluding  
5 Plaintiffs from introducing, offering evidence of, or making reference to any of the following: media  
6 coverage of the City of Fairfield, its police department, its police chief or any related matters; any prior  
7 civil cases involving the City of Fairfield, its police department or its chief of police. This exclusion  
8 includes, but is not limited to, reports, documentation, interviews, articles, complaints and any and all  
9 other evidence of the above matters.

10 **II. ARGUMENT**

11 **A. Irrelevant Evidence is Inadmissible**

12 Federal Rules of Evidence, Rule 401 defines “relevant evidence” as the following:

13 “Relevant evidence” means evidence having any tendency to make the  
14 existence of any fact that is of consequence to the determination of the  
15 action more probable or less probable than it would be without the  
evidence.

16 Federal Rules of Evidence, Rule 402 precludes the admissibility of evidence which is not relevant.

17 Extraneous and unrelated evidence of prior media coverage or past unrelated civil suits has no  
18 relevance whatsoever to the issues raised by Plaintiff’s arrest and the force used to accomplish that  
19 arrest. Further, the admission of such evidence would be unfairly prejudicial to the Defendants and, as  
20 such, is precluded by Federal Rules of Evidence, Rule 403, which provides that:

21 Although relevant, evidence may be excluded if its probative value is  
22 substantially outweighed by the danger of unfair prejudice, confusion of  
23 the issues, or misleading the jury, or by considerations of undue delay,  
waste of time, or needless presentation of cumulative evidence.

24 Even if Plaintiffs could show some relevance in the subject evidence, its probative value would be  
25 substantially outweighed by the prejudice, jury confusion and delay which would result from its  
26 admission. As more fully set forth below, evidence of media coverage in this and unrelated lawsuits, is  
27 completely lacking in probative value and relevance, and is inflammatory.

28 ///

**B. Evidence of Other Civil Cases Against Defendants is Irrelevant and Prejudicial**

As stated above, Federal Rules of Evidence, Rule 403 provides that evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Congress has defined “undue prejudice” within this context as evidence having an undue tendency to suggest decision on an improper emotional basis. (See Advisory Committee’s Notes on FRE Rule 403.) Such evidence uniquely tends to evoke an emotional bias against defendant as an individual, and has trivial probative value.

The California companion statute to Federal Rules of Evidence, Rule 403 is Evidence Code § 352. The California courts have held that the “prejudice” referred to in this section is evidence which uniquely tends to evoke an emotional bias against defendant as an individual and which has very little effect on the issue. (*People v. Yu*, 143 Cal.App.3d 358 (1983).) This is directly analogous to the instant action. Any evidence pertaining to other events, allegations, lawsuits, complaints, accusations and rumors cannot possibly be construed to have any relevance to the instant action. Further, it should be excluded under Federal Rules of Evidence, Rule 403 and California Evidence Code § 352 as being unfairly prejudicial to Defendants in the trial of this matter.

Should such evidence be admitted, there is a substantial danger that the jury will be swayed in its judgment of each individual Defendant officers’ actions in the instant case because of unrelated problems encountered by the Fairfield Police Department and the City of Fairfield. This type of scandalous and inflammatory material should not be allowed to bias the jury in its analysis of the facts of this case. The issue of each Defendant officers’ individual culpability in the instant case should not be clouded by evidence from other cases and events. The admission of such evidence would impede the jury’s ability to assess the liability of each Defendant officer in the case before it, based upon the evidence presented regarding facts and circumstances known to each officer individually at the time of the subject incident.

The trial court has broad discretion to exclude evidence under Federal Rules of Evidence, Rule 403 and Evidence Code § 352 based on unfair prejudice to assure that issues are adjudicated on their merits. In *People v. Cardenas*, 31 Cal.3d 897 (1982), the Court disallowed evidence of gang affiliation due to the perceived danger that the jury would infer therefrom the defendant’s criminal disposition.

1 The same concerns are present in the instant case that the jury may infer “guilt by association” from  
 2 the evidence of or even reference to other matters involving the City of Fairfield or its police  
 3 department.

4 The unfair prejudice which would necessarily be created by the introduction of such evidence  
 5 also has the potential of creating substantial confusion in the minds of jurors, as to the facts sought to  
 6 be proven by the introduction of evidence of such unrelated incidents. Further, the admission of such  
 7 collateral evidence will necessarily result in undue consumption of the Court’s time on which ground  
 8 alone it should be excluded. (See, e.g., *Cubic Corp. v. Marty*, 185 Cal.App.3d 438 (1986); *People v.*  
 9 *Hecker*, 219 Cal.App.3d 1238 (1990).) All of these potential dangers weigh strongly against the  
 10 admissibility of the evidence at issue.

### 11 **C. No Media Coverage Has Any Relevance in this Matter**

12 As stated above, pursuant to Federal Rules of Evidence, Rule 403 and California Evidence  
 13 Code § 352, any evidence of media coverage of the subject or unrelated events or the Fairfield Police  
 14 Department and the City of Fairfield has no evidentiary value and are prejudicial and inflammatory.  
 15 Plaintiffs should be precluded from introducing any evidence of such media coverage and from asking  
 16 any questions about the existence of such evidence.

### 17 **III. CONCLUSION**

18 For the reasons stated above, Defendants respectfully request this Court preclude Plaintiffs from  
 19 making any mention of or asking any questions about any other civil cases or media coverage  
 20 involving the City of Fairfield, the Fairfield Police Department or Chief Gresham or Officers Schraer,  
 21 Tigert, Trojanowski, Ruiz, Oviatt, Cesar and Cade Beckwith or any other member of the Fairfield  
 22 Police Department at the trial of this matter.

23 Dated: October 17, 2006

MEYERS, NAVE, RIBACK, SILVER & WILSON

25 By: /s/ Kimberly E. Colwell

26 Kimberly E. Colwell  
 27 Attorneys for Defendants  
 CITY OF FAIRFIELD, POLICE OFFICERS MARK  
 28 SCHRAER, CHAD TIGERT, STEVEN  
 TROJANOWSKI, JR., STEPHEN RUIZ, TROY  
 OVIATT, FRANCO CESAR and CADE BECKWITH

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